

PS/CD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT DUKES,

Petitioner,

-v-

HAROLD GRAHAM,

Respondent.

16-CV-918(LJV)
ORDER

INTRODUCTION

The petitioner, Robert Dukes, is an inmate in the Auburn Correctional Facility. He has submitted to this Court a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, in which he alleges that his 2012 conviction in the Supreme Court of the State of New York (Yates County) was in violation of the United States Constitution. See Docket Item 1. Despite initially moving for permission to proceed *in forma pauperis*, the petitioner since has paid the \$5.00 filing fee. See Docket Item 2.

ORDER

IT HEREBY IS ORDERED that the petitioner's request to proceed *in forma pauperis* is denied as moot; and it is further

ORDERED that the respondent shall file and serve an **answer** to the petition no later than **90 days from the date of this order**, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts. The answer shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If so, the respondent shall provide the Court with a transcript of the relevant

proceedings, together with any records and documents relating to them, so that the materials can be filed in the official record of this case.

In addition to his answer, the respondent shall file and serve, within **90 days from the date of this order**, a memorandum of law addressing each of the issues raised in the petition and including citations of supporting authority.

Within **30 days from the date this order is filed** with the Clerk of Court, the respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits demonstrating that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer by **14 days**. This deadline will not extend beyond 14 days even if the Court does not act on the respondent's motion within that time; and it is further

ORDERED that within **30 days from the date this order is served** on the custodian of the records, any official having custody of the records of the proceedings leading to the conviction in the New York State Supreme Court shall submit such records to the respondent or his attorney.

Because the petitioner is appealing from a judgment of conviction, the respondent must provide the Court with a copy of the briefs, the record on appeal, and any opinions of the appellate courts so that such documents can be filed in the official record of this case; and it is further

ORDERED that the petitioner shall have **30 days after his receipt of the respondent's answer or other pleading** to file a written response; and it is further

ORDERED that the Clerk of Court shall electronically serve a copy of the petition, together with a copy of this order, via a Notice of Electronic Filing to Donna Milling <Appeals-DAOoffice@erie.gov> of the Office of the District Attorney of Erie County.

THE PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENT.

SO ORDERED.

DATED: December 12, 2016
Buffalo, NY

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE